



25 JUN 2009

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ANTOINETTE M. TEASE
P. O. BOX 51016
BILLINGS MT 59105

In re Application of
Reistroffer
Application No.: 10/597,346
PCT No.: PCT/US2005/003302
Int. Filing Date: 01 February 2005
Priority Date: 06 February 2004
Attorney Docket No.: REI06-0001
For: Linear Incendiary Strand And Method
For Prescribed Fire Ignition

DECISION

This is with regard to the "Petition To Revive" (refund request) filed on 15 December 2008.

DISCUSSION

In a Decision mailed on 14 November 2008, the petition under 37 CFR 1.137(b) filed on 12 September 2008 was granted, while the petition under 37 CFR 1.181 filed on 12 September 2008 was dismissed, without prejudice, because

Petitioner does not explicitly state that a search of the file jacket and docket records indicates that the Notification was not received. Therefore, requirement (2) has not been satisfied.

Petitioner has not provided a copy of relevant docket records; therefore, requirement (3) has not been satisfied.

Because the petition under 37 CFR 1.181 was not grantable as presented, it was necessary and appropriate to consider the merits of the petition under 37 CFR 1.137(b).

In response, petitioner has filed a renewed petition for withdrawal of the holding of abandonment. In that this international application already has been revived with respect to the national stage in the United States, pursuant to 37 CFR 1.137(b), the instant petition is moot with respect to the issue of the revival of the application. Moreover, since the merits of the petition under 37 CFR 1.137(b) were treated in the Decision mailed on 14 November 2008, payment of the petition fee was appropriate. However, the following observations are made.

Petitioner states that "a search of the file jacket and docket records indicates that the Notification of Insufficient Fees dated December 4, 2007 was not received." This statement would be sufficient to satisfy requirement (2). Petitioner also provides "a copy of the docket sheet for this case." Inspection of the provided sheet reveals that it appears to be a listing of documents pertaining only to this particular application. MPEP 711.03(c) explains (in part) that

A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the nonreceived Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the

following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question.

Since the provided docket record does not appear to be a copy of a master docket report, and since no statement of the unavailability of such a report has been made, it would not be appropriate to conclude requirement (3) to have been satisfied.

It is also noted that petitioner has not provided a statement describing the system used for recording received correspondence. MPEP 711.03(c) also states that

*The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner **>describing the system used for recording an Office action received at the correspondence address of record with the USPTO. The statement should establish that the docketing system is sufficiently reliable. It is expected that the record would include, but not be limited to, the application number, attorney docket number, the mail date of the Office action and the due date for the response.*

Since petitioner has not adequately demonstrated non-receipt of the Notification of Insufficient Fees mailed on 04 December 2007, and because it was necessary to reach the merits of the petition under 37 CFR 1.137(b), it would not be appropriate to refund the petition fee at this time.

The Filing Receipts mailed on 04 December 2007 and 26 May 2009 show a "Filing or 371(c) Date" of "07/20,2006," but the executed declaration was not filed until 23 August 2006. Therefore, both of said filing receipts were defective, and they are hereby **VACATED**.

DECISION

The petition is **DISMISSED**, without prejudice.

Applicant is **not required** to respond to this Decision. Any request for reconsideration must be filed within **TWO (2) MONTHS** from the mailing date of this Decision, extendable under 37 CFR 1.136(a).

This application is being returned to the Office of Patent Application Processing. Its date under 35 U.S.C. 371(c)(1), (2) and (4) is **23 August 2006**.

/George Dombroske/
George Dombroske
PCT Legal Examiner
Office of PCT Legal Administration
Tel: (571) 272-3283
Fax: (571) 273-0459